

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JONATHAN SEGNER,

Plaintiff,

v.

Case No. 12-C-231

MARC CLEMENTS,

Defendant.

ORDER DENYING CERTIFICATE OF APPEALABILITY

This Court dismissed this § 2254 habeas action on March 19, 2012. Petitioner has now filed a motion to stay and a motion to appoint counsel. In his filings, along with a letter to Chief Judge Clevert, he asserts that this Court erred by dismissing his petition on the grounds that Petitioner had failed to obtain leave of the Court of Appeals prior to filing a second or successive petition. He asserts that a second or successive petition may be entertained if the factual predicate for the claim could not have been discovered previously. 28 U.S.C. § 2244(b)(2)(B).

Although it is true that there are grounds for allowing a second or successive petition, that is a question in the first instance for the Court of Appeals. Under 28 U.S.C. § 2244(b)(3)(A), a petitioner must first seek leave of that court before filing such a petition. For that reason, the petition was dismissed.

I now construe the present filings as a request for a certificate of appealability, which is **DENIED**. 28 U.S.C. § 2253(c)(2) (applicant has not made substantial showing of the denial of a constitutional right).

The motion to stay and motion to appoint counsel are **DENIED** as moot.

SO ORDERED this 4th day of April, 2012.

s/ William C. Griesbach
William C. Griesbach
United States District Judge